

Office Action is traversed and a request is hereby made to have the finality reconsidered by the Primary Examiner and withdrawn under MPEP §§706.07(a), (c) and (d).

As is clear from the Appendix to the previous Amendment, which shows claim amendments with marking to show the changes made, independent claims 1, 13, 16 and 21 were amended solely for purposes of clarification. There was no amendment made to overcome the prior art.

First, with regard to the prior art, the only reference cited by the Examiner in a rejection under 35 U.S.C. § 102(b) was the patent to Yoshitomi et al. Applicants asserted in their arguments that the reference has nothing to do with the game that depends upon improvisational music performed by a player. All of the original claims relate to “an improvised musical operation.” In addition, it was stressed that there is no consideration of a comparison between an actual improvised performance and operation instructions, and no consideration of the measured of performance of two or more players. Again, these features appeared in the original claims in the application. Thus, the claims substantively were clearly distinguishable from the prior art.

With regard to the actual changes made, claim 1, for example, merely change the word “for” to “in connection with”, added the articles “and” and “a” for better English and changed the word “display” to displayed” for the same reason. Similar changes were made to the other independent claims. Nothing in these changes were driven by the rejection on the basis of prior art. Nothing in these changes required consideration of new issues or necessitated a new search. The Examiner was required to identify new prior art because the Applicant clearly distinguish the cited art from the original claims and could overcome an obviousness rejection because of

common ownership. On this basis, any consideration of the standards set forth in the MPEP, the final rejection is improper.

Applicants respectfully submit that the Examiner raised a new ground of rejection that was not occasioned by the Applicant's amendment and, accordingly, the finality of the present rejection is improper. Applicants hereby petition for reconsideration of the finality of the rejection and request that the finality of this rejection be removed.

***Claim Rejections - 35 U.S.C. § 102***

Claims 1-22 are rejected under 35 U.S.C. § 102(b) as being anticipated by Sitrick (5,728,960). This rejection is traversed.

As previously noted, the present invention is an improvement to a **game system** in which a player operates an instrument according to instructions provided to the player on the display. In order to enhance the attractiveness of the game to an experienced player, the present invention is directed to an **improvised performance** (i.e., <sup>adding/editing</sup> adlibbed performance), as defined by the description on pages 1 and 2 of the specification. The disclosed game system enables a player to enjoy improvised performance where the performance is "marked up," i.e., scored, thereby providing a challenge for the experienced player. The invention further focuses on two fundamental components with music composition, namely cord progression and timing, in creating the building blocks for an improvisational piece, as explained on pages 17-23 for a single player and pages 24-28 for multiple players (e.g., or duets). Claims 1-12 and 16-20 are focused on the execution of a game by a single player, while claims 13-15 and 21-22 concern the execution of the game by multiple players. All of the claims are expressly limited to "improvised musical operation which is played with the degree of performance by the player" which clearly relates to improvisational rather than fully preprogrammed performance.

### Sitrick

The Examiner asserts that Sitrick discloses a game system that enables a player to play a game for evaluating accuracy of an operation performed when a player has used an instrument in accordance with an operational instruction given by a displayed image of the instrument on a game display screen (with reference to col. 5, line 14-col. 6, line 31). The Examiner asserts this process involves a markup processing device which marks up an improvised musical operation in accordance with a performance operation instruction, with reference to col. 6, line 32-col. 7, line 11. The Examiner comments that Sitrick shows that the game system can be played by a plurality of players, with reference to Fig. 4. The Examiner makes no comment with regard to the marking up of an improvised musical performance on the basis of (1) musical cords or (2) timing.

The Sitrick patent differs from the present invention in several respects. First, it does not disclose a game, as claimed, thereby providing a fundamental difference between the invention set forth in all of the claims and the prior art. Specifically, Sitrick teaches a processor-supplemented music composition and presentation system that enables a user to select from one or a variety of musical compositions, control the adaptation of the selected composition and efficiently distribute the edited version to others, particularly other players, in a paperless environment (col. 2, lines 8-12). As specifically explained in the portions of the patent identified by the Examiner, beginning at col. 5, line 15, a user selects one or more musical compositions from a database. The user can optionally edit the selected score (changing key, note, timing) and transmit the edited music to one or more displays. Each display can have the same or different presentations of music notation as appropriate, for example, based on the particular instrument

type being played. The composition as modified may be played back to the user and displayed as a score. For example, it may be displayed to the composer and/or the individual instrument players having individual music workstation stands (col. 6, lines 32-67). Clearly, this is not a game system, as it involves creating and distributing music.

Second, Sitrick does not concern an improvisational feature as part of a game, nor use a mark-up processing feature for marking up improvised musical operations that are played with a degree of freedom of performance. While the Sitrick system permits editing, there is no determination of the quality of the editing to an original music score that has been performed, which is a feature of the game in the present invention. Sitrick does consider a teaching feature that permits a comparison of a performer's performance parameters to store and display music (col. 3, lines 38-51). This comparison, however, is of predetermined standards for physical movements of the artists, which, timing, volume and temple, etc., through audio recognition. In this regard, beginning at col. 12, line 61, the patent teaches that in a network environment having a master and slave work stations, performance parameters may be transmitted by the slave station that corresponds to an individual performer to a master station that corresponds to a conductor or teacher. An analysis of the user input, including key, pitch and temple for a musical composition may be evaluated. However, this evaluation concerns the performance of a predetermined score by a user, rather than the improvisational play of a user, as claimed. Again, the present invention concerns a game having a mark up of an improvised musical operation rather than a predetermined score, whether or not a standard composition or a previously edited by a composer. The significant difference is that the evaluation in the prior art is of a predetermined score and not the improvisational composition by a performer.

As disclosed at col. 9, lines 26-45, the system can generate a graded score indicating errors and presented in a variety of ways to a teacher or performer. The patent suggest that other expert system roles can be provided by music teachers to give the necessary parameters for modeling expert system reasoning. However, nothing in this teaching suggest a game environment, particular one involving improvisational performance. Indeed, this portion of the disclosure teaches a "comparison of the performance to the score in the training mode." This is clearly a teaching environment rather than a gaming environment, as claimed.

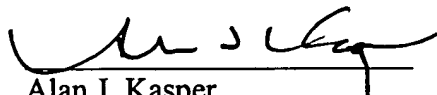
Third, the reference does not teach such improvisational performance game for two people. The Examiner notes that Fig. 4 illustrates a network that plural stand-alone workstations 105 to be connected to a common processor 420 and database 410. This illustration, as described at col. 12, refers to a coordinated performance of a score by multiple members of an orchestra or band. This is not related to a competition between multiple players or to a participation in a game, as expressly claimed. There is no teaching or suggestion that players may participate in an improvisational performance and be graded on their result in a game environment.

On the basis of the foregoing, Applicants traverse the Examiner's rejection without amendment to the claims.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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